

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HENDRICK BLOCK,

Plaintiff,

v.

ANY MERCED INC.,

Defendant.

Case No. 1:21-cv-01251-JLT-EPG

ORDER FOR PLAINTIFF TO SHOW
CAUSE WHY THIS ACTION SHOULD
NOT BE DISMISSED FOR FAILURE TO
COMPLETE SERVICE PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 4(m)

(ECF No. 31)

14 DAY DEADLINE

On August 17, 2021, Plaintiff filed this action under the American with Disabilities Act and California's Unruh Act, alleging that he is disabled and encountered barriers at Defendant's facility which denied Plaintiff the ability to use and enjoy the goods, services, privileges and accommodations offered at the facility. (ECF No. 1).

Plaintiff has twice moved for default judgment, with this Court issuing, and the District Judge adopting, two findings and recommendations, recommending that default judgment be denied based on Plaintiff's failure to establish service on Defendant. (ECF Nos. 8, 15, 18, 26, 30, 31). For the reasons given below, the Court orders Plaintiff to show cause why this action should not be dismissed without prejudice for failure to complete service pursuant to Federal Rule of Civil Procedure 4(m) and this Court's order.

Under Federal Rule of Civil Procedure 4(m), "[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must

1 dismiss the action without prejudice against that defendant or order that service be made within a
2 specified time.” Fed. R. Civ. P. 4(m). However, “if the plaintiff shows good cause for the failure,
3 the court must extend the time for service for an appropriate period.” *Id.*

4 After the District Judge denied Plaintiff’s initial motion for default judgment, the Court
5 extended the time for Plaintiff to serve Defendant to April 22, 2022, warning Plaintiff that this
6 action may be dismissed without prejudice if Defendant was not served by this date. (ECF Nos.
7 18, 19). Because Plaintiff, through the adjudication of Plaintiff’s subsequent motion for default
8 judgment has failed to show that service was ever achieved on Defendant in this case by April 22,
9 2022, the extended time period for service has expired without service being achieved.

10 Accordingly, IT IS ORDERED as follows:

11 No later than 14 days from the date of this order, Plaintiff shall show cause why this
12 action should not be dismissed without prejudice for failure to complete service pursuant to
13 Federal Rule of Civil Procedure 4(m) and this Court’s January 24, 2022 order (ECF No. 19).

14
15 IT IS SO ORDERED.

16 Dated: July 18, 2022

17 /s/ Eric P. Grogan
18 UNITED STATES MAGISTRATE JUDGE
19
20
21
22
23
24
25
26
27
28